THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; shop and premises; accuracy of rateable value; uplift due to a return frontage; allowance for width to depth ratio; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Gnd Floor, 19 Market Place, Hexham NE46 3NX

APPEAL NUMBER: CHG100745888

BETWEEN: Ashley Matthews Ltd — Appellant

and

Ms A Hitchings (Valuation Officer) — Respondent

PANEL: Mrs F Rahman-Cook (Presiding Senior Member)
Mrs AE Fielder (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 13 January 2023

APPEARANCES: Ms F Aspinall from RVA Surveyors (the representative for the appellant)
Mr L Worthington from RVA Surveyors (expert witness)
Mr L Crossley (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of Gnd Floor, 19 Market Place, Hexham NE46 3NX (subject property) at £15,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal in respect of the subject property which arises from a challenge made by the appellant's representative on 10 November 2021. The challenge was in respect of the entry in the rating list at £16,250 RV as 'shop and premises' effective from 1 April 2017. The appellant sought a revised assessment of £14,750 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was well founded in part and the RV was reduced to £15,500 and a decision notice to this effect was issued on 7 April 2022. The appellant made an appeal to this Tribunal against the decision notice which was received on 20 June 2022, on the grounds that the reduced RV of £15,500 was not reasonable.

3. Ms Aspinall appeared on behalf of the appellant as advocate and Mr Worthington as expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Worthington stated that he was instructed under a conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

4. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations, and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

5. The subject premises comprises a shop which is located in the centre of the market town of Hexham. It is occupied as a jewellery shop. The property is of three-storeys but the subject property is the basement and ground floor, which was of traditional construction with a glass façade.

6. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

7. The issue between the parties is the RV of the subject property specifically the application of a 5% width to depth ratio to the RV.

Evidence and Submissions

8. Ms Aspinall submitted a bundle of evidence which included photographs and details of the subject property and comparable properties, her revised RV calculation, copies of correspondence between the parties and her submissions.

9. She submitted that the appeal should be allowed and the RV on the subject property should be reduced to £14,750.

10. Mr Crossley referred the panel to the challenge application and decision.

11. In consideration of the comparable properties admitted in evidence, Mr Crossley asked the tribunal to confirm the RV of £15,500 with effect from 1 April 2017.

Decision and Reasons

12. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let' and in the state set out in Schedule 6 of paragraph 2(7) to the Act, in relation to both the physical nature of the property and its mode or category of use.

13. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, namely:

(1) 'Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the VO. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

14. Ms Aspinall explained to the panel that the parties had agreed that the 10% uplift for a return frontage be reduced to 5% which had resulted in the reduction of the RV to £15,500. She did

however submit that the allowance to reflect the width to depth ratio of 5% should be increased to 10%. The area of the shop that was Zone A was 95% of the shop unlike the comparable properties where the Zone A was approximately 30% of the total area. This meant that any area on the ground floor of the subject property which was used as storage was being charged at the Zone A rate. The other comparable properties which also had a 5% reduction due to the width to depth ratio did not have such a large percentage of the floor space at Zone A. For these reasons, Ms Aspinall argued that the subject property should therefore have a 10% reduction to account for this inequality.

15. She referred the panel to the comparable properties which had a 5% reduction:

- 3-5 Fore Street which was occupied by Costa. It had a 5% allowance for width to depth.
- 46 Priestpopple was occupied by an estate agent and had a 5% allowance for width to depth.

16. The panel noted that there were no other properties in the locality which had a 10% reduction, only a 5% reduction the same as the subject property already had.

17. The subject property was held on a lease from 2010 at a rent of £15,000 per annum, it was for ten years with rent reviews but the rent did not increase on any of the reviews and the landlord paid for any external repairs. The rent analysed to £14,250 and Ms Aspinall submitted that this supported an RV of £14.750. Ms Aspinall conceded that the VO had been asking for a copy of the lease to be able to consider the rent and the terms of the lease and had still not had a copy. She explained that she had only received the copy from the appellant that morning and so had not had chance to send Mr Crossley a copy prior to the hearing.

18. The panel was aware that in the case of *Lotus and Delta* the basket of evidence used in the valuing of a property included that of the rent on comparable properties in the vicinity of the subject property. Upon questioning from the panel Ms Aspinall confirmed that she had been unable to ascertain the rent on the two comparable properties. The panel found that the width to depth ratio should not be used to ensure the rental figure for the subject property was in line with the RV. The panel could therefore put little weight on this evidence.

19. Mr Crossley made the following submissions in relation to the comparable properties put into evidence by Ms Aspinall:

- 3-5 Fore Street In terms of zone A (ITZA) it was 109.93m^2 and therefore was substantially larger in size to the subject property which had a zone A area of 80.60m^2 and a zone B area of 37.70m^2. The property was also a double unit and that also affected the ITZA rate. This property also had a large part of the zone A made up of a store, toilet and staff room.
- 46 Priestpopple has an ITZA of 93.83m^2 and has a reduction for width to depth area of 5% which is added as an end allowance unlike the subject property. This property is long and narrow which results in Zone B being half the width of Zone A unlike the subject property which is a more traditional square shape and therefore a more usable space.

20. He further submitted that no other properties in the vicinity of the subject property had 10% allowance for a width to depth ratio as requested by Ms Aspinall. That, he argued supported

the 5% allowance which the subject property already had and not a 10% allowance as requested.

21. Mr Crossley drew the panel's attention to the fact that at the same time as the rent was being negotiated there was substantial work being carried out on the bus station and a local bridge in Hexham. This could have impacted on the rent agreed. The works were carried out between 1 February 2016 and 30 November 2016 and the rent review was carried out around June 2016. The RV is set as at 1 April 2015 and so would predate this rent review and the works and so to increase the allowance by using the lower rent would be to take into account a short term development of ten months in relation to the compiled list entry.

22. From the basket of evidence provided by the VO the panel was satisfied that the current assessment of the subject property at a RV of £15,500 was reasonable and the appellant had not provided any evidence to persuade the panel that it was excessive. The appeal is therefore dismissed.

Date: 26 January 2023

Appeal number: CHG100745888

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.